

Section 5 – Procurement

I. Small, Minority and Women-Owned Business Enterprises

Positive efforts shall be made by each subgrantee to utilize small, minority and woman owned-business enterprises as a source for supplies and services. An effort must be made to reach small, minority (MBE) and women-owned business (WBE) enterprises at the standard bid time through notification of the bid solicitation, as well as by contacting people who can provide information on these business enterprises (see Competitive Procurement Standards, Part V). Steps the subgrantee must take to solicit small, minority and woman-owned business enterprises include, but are not limited to the following: The subgrantee must (1) make a good-faith effort to solicit bids from all interested and eligible suppliers and (2) shall advertise formal bids in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders. The following is the website for MBE/WBE participants: <http://www.directory.oeo.oa.mo.gov/>

II. Procurement of Building Insulation Products Containing Recovered Materials

(Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976)

A subgrantee using federal WAP funds must put into effect affirmative procurement programs to procure items made from the highest percentage of recovered materials practicable, considering competition, availability, technical performance and cost, if procurement contracts for such items exceed \$10,000. In addition, EPA guidelines effective February 17, 1990, specify insulation products purchased in bulk lots exceeding \$10,000 must meet the intent of this Act. (See Part X.C. of this section for more information)

III. Procurement, Management, Leasing and Disposal of Non-Expendable Property

Purpose: This section is to inform Missouri Weatherization subgrantees of the procedures that must be followed in the procurement, management and disposal of vehicles and equipment. Specific requirements are described below.

A. Vehicle and Equipment Purchase Guidelines

All agencies seeking to purchase vehicles or weatherization equipment greater than \$5,000 in value must receive prior written approval for the purchase by providing DED/DE with a purchase justification for each request. **NOTE: All vehicle purchases, even if purchase price is below \$5,000, require both DOE and DED/DE approval before the vehicle may be purchased.** The purchase justification should be submitted on the, “*Vehicle/Equipment Purchase Lease Request*” form (see Attachment 5-7). All portions of this form are to be completed. Any additional supporting information should also be submitted at the time the request is made. This purchase request form must also be submitted if an agency wishes to purchase a surplus vehicle or equipment from another agency at a cost of \$5,000 or more. Only under special circumstances, and with DED/DE’s prior approval, shall agencies purchase used vehicles or equipment at a cost of more than \$5,000.

Subgrantees must comply with all requirements specified in 10 CFR Part 440 and 2 CFR Part 200, and the requirements specified in the Scope of Services and the Missouri Weatherization Program Competitive Procurement Standards. Also, for further information see Part V, Competitive Procurement Standards and Part VI, Solicitation in this section).

All vehicles/equipment must be purchased no later than 60 days prior to the close of the program year.

For approval of **all** vehicles and equipment purchases over \$5,000, the minimum information required by DOE and the Division of Energy includes the following:

(Items 1-6 should be completed in letter format.)

1. Name of requesting Grantee and subgrantee
2. Where the vehicle will be used and how it will be used. Specify, full or part time use in Weatherization Program.
3. A statement of whether this is a replacement or an expansion for ramp-up, number of new employees planned or already hired that will be using the vehicles, and if this is a replacement, how is the trade-in being addressed?
4. Brief description of how the procurement will be done, and the confirmation that agency, State and Federal procurement guidelines will be met. See 2 CFR Part 200.317-326 – Procurement Standards
5. What funding source(s) budget category will be used, (ex. DOE Weatherization Program Operations Funds). **Subgrantee T&TA funds are not an allowable option.**
6. Statement that lowest bid will be selected, or a sufficient justification of the “best value selection” if the lowest bid was not recommended for DOE approval.
7. Copies of bid specifications (vehicle description with options requested) and a bid analysis indicating at a minimum, each bidder, the bid price, a determination whether the proposal met the bid specification
8. Copies, or invoices, of the sealed bid newspaper advertisements (for vehicle or equipment purchases \$25,000 or greater.
9. The Vehicle/Equipment Purchase, Lease Request Form, found in the attachment portion of Section 6 of the Weatherization Program Operational manual, must accompany the purchase request.

In addition, subgrantees should consider and weigh the options concerning leasing versus purchasing. If a lease-purchase option is proposed, even if the purchase price is as small as one dollar, DED and DOE must approve the transaction in advance.

Subgrantees are eligible to purchase from Missouri’s surplus property as well as utilize the State’s contracts for vehicle purchases and other equipment such as computers, blower doors, infrared thermal imaging cameras, combustion analyzers, ambient carbon monoxide meters, and gas leak detectors.

Another option to consider when purchasing vehicles is the various fleet programs offered by the automakers.

B. Property Management

Subgrantees must complete and submit to the Missouri Weatherization Program on December 1 of each year the Vehicle and Equipment Inventory Report. (See Attachment 5-5)

The subgrantee will comply with all procedures specified in 10 CFR Part 440 and 2 CFR Part 200.

Sufficient insurance must be provided for all non-expendable property.

C. Leasing

Agencies that lease equipment, buildings, or vehicles from leasing companies or agencies that lease equipment, buildings, or vehicles to their Weatherization Assistance Program must comply with the following:

The subgrantee must itemize the cost of leasing in the subgrant application and submit justification for the lease of equipment, buildings, or vehicles. The method of lease should be outlined in the justification and on the Vehicle/Equipment/Building Purchase/Lease Request (i.e., whether the agency plans to use a leasing company/dealership or the agency is leasing to the Weatherization Program). The form should be submitted to DED/DE when requesting approval.

The subgrantee must choose the method with the lowest cost to the program (i.e., leasing company/dealership or agency lease to program).

Justification for the lease should contain at least three telephone or informal bids from leasing companies/dealerships (the informal bid process may be used if the lease is less than \$24,999, if it is \$25,000 or more than a formal bid process must be used). A written comparison justifying the cost-effectiveness of lease vs. purchase must be submitted to DED/DE. When leasing/renting properties, bids should be of comparable square footage. The vehicle/equipment to be leased must be of the same quality as the vehicle/equipment purchase specification. The leasing of equipment must be as an alternative to reduction of support costs. The Vehicle/Equipment/Building Purchase, Lease Request form must be filled out completely. All documentation must be submitted to DED/DE for prior approval.

D. Property Disposition

The DOE Tangible Personal Property Report forms, the Property Closeout Certification Spreadsheet, and all required documentation, (see attachments 5-2 through 5-4 for specific instructions) must be completed and submitted electronically to DED/DE when a subgrantee wants to dispose of any items purchased with federal DOE grant funds that, when purchased, cost \$5,000 or more (per individual item) and the current fair market value of an item is \$5,000 or more.

If the items do not have current fair market values of \$5,000 or more, only the Property Closeout Certification spreadsheet, back-up documentation for current fair market value, and a photograph of the item will need to be submitted for DED/DE review.

Disposition of Vehicles/equipment with current fair-market value less than \$5,000: For vehicles and equipment that when purchased, cost \$5,000 or more (per individual item) and the current fair market value of the item is less than \$5,000, a Property Closeout Certification Spreadsheet and required documentation must be submitted electronically to DED/DE for review and approval before the item can be disposed. For equipment, that when purchased cost less than \$5,000, (per individual item) may be retained, sold or otherwise disposed of without prior DED/DE approval. **(All vehicles, no matter the original cost, must receive DED/DE approval before being disposed of.)** Subgrantees must announce surplus vehicles/equipment as available to the weatherization network first, with a deadline given to respond if interested, before selling on the open market. If no subgrantee in the weatherization network expresses interest in the property, the subgrantee may dispose of the property through open sale. The subgrantee should follow their agency's internal policy of disposing of excess vehicles/equipment concerning how the items should be sold, such as sealed bid, auction, etc. The subgrantee will notify DED/DE after the sale of the vehicle/equipment by submitting an Equipment/Vehicle Disposal Report. This procedure also will allow DED/DE to update inventory records.

All proceeds from sales must be returned to the funding source under which the property was purchased. The funds returned will be used to reduce net program support expenditures in the current program year and will be documented as such in the Agency audit. Effort should be made to expend them by the completion of the program. Subgrantees must comply with all procedures specified in 2 CFR Part 200, Department of Energy Financial Assistance Rules, as amended, the requirements specified in the DED Terms and Conditions; and the Missouri Weatherization Program's Competitive Procurement Standards.

NOTE: If proceeds from the actual sale of vehicles/equipment, (those with current fair market values less than \$5,000) are \$5,000 or more, the proceeds must be returned to the U.S. Department of Treasury. For example, if a vehicle had a current fair market value of less than \$5,000, but it sold for over \$5,000 then the proceeds must be returned to the U.S. Department of Treasury.) However, the subgrantee may retain \$500, or 10% of the sale of the vehicle/equipment, whichever is less, from the proceeds sent to the U.S. Department of Treasury for selling and handling charges.

Disposition of Vehicles/equipment with current fair-market value of \$5,000 or more: The DOE Tangible Personal Property Report forms, (SF-428, Disposition Request/Report SF-428-C, and Supplemental Sheet SF-428S) and all required documentation, (see attachments 5-3.1 through 5-3.4 for specific instructions) must be completed and submitted electronically to DED/DE for review. DED/DE will then forward the documents to DOE for their review. Subgrantees must receive prior written approval from DED/DE and DOE for disposal of vehicles/equipment with a current fair-market value of \$5,000 or more. Subgrantees must announce surplus vehicles/equipment as available to the weatherization network first, with a deadline given to respond if interested, before selling on the open

market. If no subgrantee in the weatherization network expresses interest in the property, the subgrantee may dispose of the property through open sale. The subgrantee should follow their agency's internal policy of disposing of excess vehicles/equipment concerning how the items should be sold, such as sealed bid, auction, etc. The subgrantee will notify DED/DE after the sale of the vehicle/equipment by submitting an Equipment/Vehicle Disposal Report. This procedure also will allow DED/DE to update inventory records.

If proceeds from the actual sale of vehicles/equipment, (those with current fair market values of \$5,000 or more) are \$5,000 or more, the proceeds must be returned to the U.S. Department of Treasury. Please identify the Grantee Name (Missouri Department of Economic Development), Award Number (DOE: DE-EE0006164), and Subgrantee Name and reason for return. The check should be made out to the U.S. Department of Energy and sent to the attention of Mr. Matt Bain, U.S. Department of Energy, Finance Division, 15013 Denver West Pkwy, RSF-DOE, Golden, CO 80401. Please e-mail Andrea Lucero (andrea.lucero@go.doe.gov) and Marcy Oerly (marcy.oerly@ded.mo.gov) with a copy of the check and documentation for their records. The subgrantee may retain \$500, or 10% of the sale of the vehicle/equipment, whichever is less, from the proceeds sent to the U.S. Department of Treasury for selling and handling charges. If the subgrantee chooses to retain \$500 or ten percent of the proceeds, whichever is less, for selling and handling expenses, please note that on your correspondence when mailing the check to the U.S. Department of Energy, Golden Service Center and when copying DED/DE and Ms. Lucero on your correspondence (copying DED/DE and Ms. Lucero can be done electronically). Also, the selling and expense proceeds that your agency retains must be placed in the grant from which the vehicles/equipment were purchased.

If proceeds from the actual sale of vehicles/equipment, (those with current fair market values of \$5,000 or more) are less than \$5,000, the proceeds do not have to be returned to the U.S. Department of Treasury.

According to DOE, current fair market value is whatever the subgrantee can sell it for or what a buyer is willing to pay (may or may not be Kelley Blue Book value). Subgrantees should document what offers they are or are not receiving and assign a value based on that. Subgrantees must make a good faith effort to sell a vehicle at current fair market value (advertised auction, sealed bid, etc.) and the sale price is reasonable (subgrantees have the ability to set a minimum bid price). Again, subgrantees may keep the proceeds from the sale of vehicles/equipment if the sale price is below \$5,000, however, if the proceeds are \$5,000 or more, the subgrantee must return the funds to U.S Department of Treasury.

The sale, and proceeds received from the sale of vehicles/equipment, will be monitored by both DED/DE and DOE. It is very important that the subgrantee keep very detailed and clear records of the proceeds from the sale of all vehicles/equipment.

Subgrantee Selling and Handling Expenses (if Proceeds from the Sale of Vehicles/Equipment are \$5,000 or more) 2 CFR Part 200.313 (e) (2) states that the recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

If the subgrantee chooses to retain \$500 or ten percent of the proceeds, whichever is less, for selling and handling expenses, please note that on your correspondence when mailing the check to the U.S. Department of Energy, Golden Service Center and when copying DED/DE and Ms. Lucero on your correspondence (copying DED/DE and Ms. Lucero can be done electronically). Also, the selling and expense proceeds that your agency retains must be placed in the grant from which the vehicles/equipment were purchased.

Transferring vehicles/equipment with current fair-market value of \$5,000 or more to other federally funded programs: Title to vehicles/equipment acquired with federal funds with a fair market value of \$5,000 or more must be retained by the subgrantee when using vehicles/equipment on another federally sponsored project.

When using vehicles/equipment on another federally sponsored project, the subgrantee must continue to account for this property as long as the property continues to have a fair market value of \$5,000 or more, in accordance with DOE's financial assistance regulations found at 2 CFR Part 200. Property records must be maintained to include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, the cost of the property, percentage of federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

Additionally, subgrantees must take a physical inventory and the results reconciled with the property records at least once every year. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated by the subgrantee to determine the causes of the difference. The subgrantee must, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

As long as the vehicles/equipment has a fair market value of \$5,000 or more, the use management and disposition requirements still apply to the vehicles/equipment, as indicated in 2 CFR Part 200. If the subgrantee no longer needs the property in the project or program for which it was acquired or on other federally sponsored activities, the subgrantee must request transfer approval from DED/DE. Once the current fair market value is less than \$5,000, the vehicles/equipment may be retained, sold, or otherwise disposed of with no further obligation to DOE, (DED/DE still must give approval for the sale of all vehicles, even if the current fair market value falls below \$5,000). However, subgrantees must announce surplus vehicles/equipment as available to the weatherization network first, with a deadline given to respond if interested, before selling on the open market. If no subgrantee in the weatherization network expresses interest in the property, the subgrantee may dispose of the property through open sale. The subgrantee should follow their agency's internal policy of disposing of excess vehicles/equipment concerning how the items should be sold, such as

sealed bid, auction, etc. The subgrantee will notify DED/DE after the sale of the vehicle/equipment by submitting an Equipment/Vehicle Disposal Report. This procedure also will allow DED/DE to update inventory records.

Transferring vehicles/equipment that when originally purchased cost \$5,000 or more to other weatherization subgrantees in the Missouri LIWAP network: DOE has stated that they do not insert themselves in the relationship between a grantee and subgrantee; so as long as the vehicles/equipment stay within the general program that it was purchased under (LIWAP), the grantee may allow transfer between subgrantees.

If a subgrantee wishes to transfer vehicles/equipment that, when originally purchased cost \$5,000 or more (per unit item), to another subgrantee in the Missouri LIWAP network then a written request must be submitted to DED/DE for approval. **NOTE: All vehicles, no matter the original cost must receive DED/DE approval before they can be transferred to another subgrantee.** It will be the subgrantees' choice of whether or not title of the vehicles/equipment remains with the original subgrantee or will be transferred to the subgrantee requesting the property. A very detailed, signed, and dated agreement between the two subgrantees must accompany the request to DED/DE.

All requests for disposal must include the following information: (1) item identification/description (2) manufacturer (3) model, (4) serial number or VIN; (5) original acquisition date; (6) original acquisition cost; (7) fund or grant from which the item was originally purchased; (8) mileage; (9) disposal condition code; (10) disposition code; (11) back-up documentation for current fair market value; (12) photograph of item

Subgrantees will have 90 days from the date of the Approval letter from DED/DE and/or DOE to dispose of the vehicles/equipment. The subgrantee will notify DED/DE after the sale of the equipment by submitting an Equipment/Vehicle Disposal Report.

All proceeds from the sale of vehicles/equipment with current fair market value of less than \$5,000 must be returned to the funding source under which the property was purchased. The funds returned will be used to reduce net program support expenditures in the current program year and will be documented as such in the agency audit. Effort should be made to expend them by the completion of the program. Subgrantees must comply with all procedures specified in 2 CFR Part 200, Department of Energy Financial Assistance Rules, as amended, the requirements specified in the DED Terms and Conditions; and the Missouri Weatherization Program's Competitive Procurement Standards.

IV. Management of Weatherization Materials and Contracted Service

Purpose: The purpose of this section is to inform Missouri Weatherization subgrantees of procedures that must be followed in the management of weatherization materials. Specific requirements are described below.

A. Procurement

Subgrantees must comply with all requirements specified in 10 CFR Part 440 and 2 CFR Part 200, and the requirements specified in the DED Terms and Conditions, Missouri Weatherization Program Competitive Procurement Standards.

B. Selection

For materials and contracted service, only the lowest and best bid may be accepted (See Competitive Procurement Standards, Part V).

For material items, if the lowest and best bid is not accepted and the total cost of the items is less than \$25,000, then documentation must be maintained in the files to explain the reason the lowest and best bid was not accepted.

For contracted service, the lowest and best bid must be accepted unless approved by DED/DE in writing.

C. Management

Full accountability for all materials purchased is required.

Inventory is an asset, not an expenditure.

All materials not on a completed home are a part of inventory. This includes materials: (1) in the warehouse(s); (2) on vehicles; (3) on or at partially completed homes or (4) on homes not reported in current or past months.

The inventory system must have a record that details the movement of material through the various stages of its handling. The record system shall be considered a part of the books of record for accounting and audit purposes.

The chart of accounts in the books of record must contain provision for (1) the total materials available during the year (i.e. carry-over inventory plus new purchases), (2) current inventory (monthly), (3) loss/gain (adjusted monthly) and (4) the materials on homes complete and reported.

The record system must also track the materials from purchase through installation on a completed home. Each step shall be documented, and signatures will be obtained to verify transmittal of material. The following steps are critical control points: (1) receipt of material (bulk or field purchase); (2) entry of material into the warehouse records; (3) movement of material to rolling or other subsidiary-type warehouses; (4) movement from warehouse (any type) to a specific job and (5) installation on a job or return to a warehouse.

Bulk purchased materials must be recorded in a perpetual inventory system. Agencies must use FIFO for valuation purposes unless an Agency is granted specific and written permission to utilize a different system.

Specific job purchases (windows, contract installation or small field purchase) must be valued at actual cost.

Inventory must be reconciled monthly.

- a) Determining loss/gain is a systems check as well as a physical count. Complete an accounting/inventory review to determine if losses are occurring at a stage other than physical loss.
- b) Loss is charged to the program and not to an individual job. All loss that a DED/DE monitor determines has been improperly charged to a job will be disallowed. The cost will be backed out of charges assessed to the job, and the agency will be responsible for bearing the cost with corporate funds. Continual violation will lead to stiffer penalties.

Agencies that contract for services may only charge loss to the program under special circumstances.

- a) Agencies that contract for a specific type of service (i.e. insulation) but install some materials can charge loss for materials that were directly under the control of agency staff.
- b) Loss may be charged for items ordered, which cannot be installed due to an act of God, for a specific house. As an example, if storm windows are ordered for a home that burns down prior to installation, the cost of the windows may be assessed to the program.

D. Disposal of Surplus/Salvage Weatherization Materials

Subgrantees must announce surplus/salvage weatherization materials as available to the weatherization network first before selling on the open market with a deadline given to respond if interested. If no subgrantee expresses interest in the property, the subgrantee may dispose of the property through open sale. The subgrantee should follow their agency's internal policy of disposing of excess vehicles/equipment concerning how the items should be sold, such as sealed bid, auction, scrap, etc.

Cash receipts from the sale of surplus or salvage materials should then be added to the subgrantee's cash assets and shall be used to reduce material expenditures. These funds should be used during the current program year to reduce material expense and should be documented as such in the agency audit. Please see item III. D. Property Disposition, in this section for specific disposition instructions.

V. Competitive Procurement Standards

The intent of these procurement standards is to provide general procurement guidance to the Missouri Weatherization Program subgrantees. The standards include Request for Quotation (RFQ) procurement documents. These competitive procurement standards are in accordance with state or federal guidelines.

A. General Conditions

All purchases shall be made by competitive procurement except the purchase of like items within a 12-month period with a total value of less than \$3,000.

The Invitation for Bid (IFB) competitive procurement instrument (or a similar representation) must be used for all purchases of \$25,000 or greater. The only exception is procurement of heating system contractors as detailed elsewhere in this Operations Manual.

Agencies are encouraged to solicit competitive bids from small, minority and woman owned-business enterprises.

Agencies are encouraged to purchase products manufactured in the United States when possible.

When purchasing materials or equipment from a vendor that has a physical business location and address in Missouri, then that vendor must be registered and maintain good standing with the Missouri Secretary of State Office and other regulatory agencies, as may be required by law. However, if an agency is purchasing materials or equipment from a vendor outside of Missouri and that vendor does not have a physical business or address located in Missouri, then that is considered interstate commerce and that vendor is not required to be registered with the Missouri Secretary of State Office. All contractors providing labor on homes, even if located outside of Missouri, must be registered and maintain good standing with the Missouri Secretary of State Office. **NOTE:** If a sole proprietor is doing business under a name other than the owner's true name a, "Fictitious Name" filing must be made with the Secretary of State's Office and renewed every five years. If the sole proprietor is operating under their own true name then registration with the Secretary of State's Office is not required.

Agencies are urged to seek legal guidance on IFB and contract creation, and on bid interpretation.

Agencies must utilize written, internal procedures for weatherization service and material procurement. These written procedures must be updated as needed and should include the following: (1) agency personnel in charge of the procurement process; (2) development of the procurement document; (3) pre-bid conference; (4) bid announcement/publicity; (5) handling of bidder questions prior to bid opening; (6) detailed bid opening procedures; (7) handling of bidder questions following bid opening; (8) documentation of bid opening procedures; (9) bid corrections; (10) bid withdrawals; (11) bid protests; (12) bid qualification process; (13) bid evaluation process; (14) bid tabulation process; (15) sole-source procedures

and rebid; (16) preliminary award announcement; (17) final award and announcement; (18) review for contract compliance; (19) notification and documentation of contractor problems; (20) contract cancellation/termination; (21) breach of contract notification and response procedures; (22) re-award or rebid following contract cancellation/termination; (23) contract fulfillment and normal closure; (24) contract extension/negotiation; (25) IFB amendment or withdrawal; (26) resolving bid ties; (27) post award orientation meetings; (28) process used for telephone bids; (29) procedures for addressing material testing standards or specifications questions; (30) bid bonds; (31) performance bonds; (32) contract performance evaluation; (33) bidders lists; (34) bids from sole proprietors, partnerships and corporations and (35) implementation and review of the agency's affirmative procurement program for building insulation products containing recycled products.

B. Determining Procurement Method

Under \$3,000 - No Bid Required

All purchases shall be made by competitive procurement except those that are a single or repetitive purchase of like items within a 12-month period, with a total value of less than \$3,000. **Note: All vehicle purchases, even if the purchase price is below \$3,000, require both DOE and DED/DE approval before the vehicle may be purchased.**

\$3,000-\$24,999 Informal/Telephone/Written Bids Required

Single or repetitive purchases of like items or services, within a 12-month period, with the total value of \$3,000 to \$24,999 must be procured through the competitive process by informal/telephone/written bids. The agency must obtain a minimum of three (3) competitive bids. (See Sole Source; Sole Response; and "No bid" Response, Part VII, B of this section) However, informal/telephone/written bids are to be completed each time the item(s) is (are) needed. Purchases within this dollar-value window may also be procured by sealed, written bids. However, if the cumulative purchases in a 12-month period exceed \$24,999, then a formal, bid process must be completed.

The agency may wish to use the, "Bid Tabulation" (See Attachment 5-12, Form G)

The agency may wish to require telephone bidders to submit written bids to the agency before the end of five working days in order to be eligible for a contract award.

Before any work is awarded, a contract between the agency and the contractor must be signed by both parties, which includes all of the clauses and disclaimers required by the Program Operational Manual. (See Part V, D, 2, s), (1) through (14) of this section)

All informal bid documentation (not related to a specific home, such as a RFQ for a furnace, because that bid documentation should be included with the specific client file it pertains to) should be maintained in the agency's general/master bid files.

\$25,000 or more - Formal, Sealed Bids Required

Unless bids are done on a home by home basis, (see part V,C. of this section) purchases of items or services, within a 12-month period, with a total value of \$25,000 or greater must be procured through the formal competitive bid process. These purchases must be completed by advertised, sealed, written bids. The agency must obtain a minimum of three (3) competitive bids. (See, Part VI, B, Ensuring Competition and Part VII, B, Sole Source, Sole Response and “No Bid” Response of this section)

Before any work is awarded, a contract between the agency and the contractor must be signed by both parties, which includes all of the clauses and disclaimers required by the Program Operational Manual. (See Part V, D, 2, s), (1) through (14) of this section)

C. Procedures for Bidding Contract Work on a Home-by-Home Basis

Agencies that would prefer to bid their contract work on a home-by-home basis may do so by establishing a pool of contractors from which they solicit bids for each home. If this method is chosen, the following procedures must be strictly followed:

1. Establish a Contractor Pool

a) Determine the Time Period

The pool for each type of contract work (weatherization, HVAC, or electrical) must be set up for a period of one year or less, preferably coinciding with the DOE program year of July 1 to June 30.

b) Advertise the Creation of the Contractor Pool

The subgrantee must advertise in two daily newspapers of general circulation, in such places as are most likely to reach prospective bidders, that they are seeking contractors to perform weatherization, HVAC, and/or electrical work in the subgrantee’s service area. This should be done at least thirty (30) days prior to the beginning of the selected time period, and cannot be done less than fourteen (14) days prior to the beginning of the selected time period. The subgrantee may also advertise through other media outlets, such as websites, radio, etc. The advertisement must tell the contractor where to get information on the requirements necessary to be included in the contractor pool.

c) Make the Contractor Requirements Available

Make available to all interested contractors (online, in person, by fax or by mail) a list of requirements, documents, and certifications or licenses that will be required in order for the contractor to be added to the pool. This list must continue to be available at all times to anyone who requests it.

d) Create the Contractor Pool

As the required documents are submitted, prepare a folder for each contractor's documentation. Include the Contractor File Checklist. When a contractor has submitted all of the required documentation, add that name to the contractor pool and file the folder with your other contractor files. If an agency does not receive the required documentation from at least three vendors, approval must be obtained from DED/DE before proceeding.

e) Adding Contractors After the Start of the Selected Time Period

A contractor may be added to the pool, even if the selected time period has already begun, provided that the contractor has submitted the required documentation.

2. The Bidding Process

a) Distributing the Work Specifications

When a home (or a group of homes) is ready to be bid, the subgrantee will develop a list of job specifications to be sent as a bid invitation to the contractors in the pool. The list will reflect the measures on the work order. This list should be as detailed as possible so the contractors can provide the most accurate quote possible.

The job specification list must be distributed to *every contractor in the pool*, in whichever of the following methods that each contractor has requested: by mail, by fax, or by email. The contractor may also request to pick up the list at the agency. Regardless of the method of delivery, the exact same document must be distributed to each contractor.

The job specification list must also include instructions as to how, when, and where the bids are to be submitted to the subgrantee. Contractors must be given a minimum of five (5) business days from the date the list was distributed to submit their bids. The list must be distributed (mailed, faxed, or emailed) to all contractors on the same day. If a contractor prefers to pick up bid documents at the agency's weatherization office, that contractor must be notified by phone on the same day the documents were distributed to the other contractors. That contractor must submit his/her bid by the same due date, regardless of when he/she actually picked up the list.

The subgrantee is responsible for maintaining documentation indicating the date that the job specification list was sent to each contractor.

b) Receiving the Bids

Since these will be informal bids (less than \$25,000) the bids may be mailed, faxed, emailed, or hand delivered, or they may be given over the phone. If the bid is given by phone, the subgrantee must complete a quote form identifying the contractor and the contractor's bid amount, along with the date and time the quote was given. This

quote form must be signed by the contractor within five (5) days if he or she is the winning respondent.

The subgrantee should also consider adding a disclaimer to the job specification list stating that the subgrantee assumes no liability if the contractor misses the bid deadline because there was no one available to take the quote by phone.

c) Awarding the Contract

Bids may be evaluated and awarded at any time after the bid submission deadline, or sooner if bids have been received from all contractors in the pool. The subgrantee is not obligated to contact non-winning bidders, but all bid documentation should be made available (at the subgrantee's location) for non-winning bidders to review, if so requested.

Before any work is awarded, a contract between the agency and the contractor must be signed by both parties, which includes all of the clauses and disclaimers required by the Program Operational Manual. (See Part V, D, 2, s), (1) through (14) of this section) This contract will not include any pricing; only the terms in which the individual awards will be executed.

d) Bid Documentation

The following documents must be retained in their respective client file:

- a list of the contractors the bid invitation was sent to
- documentation indicating how and when the bid invitation was distributed to each contractor
- the job specification list that was sent to the bidders
- all bids received from the contractors
- a list of the contractors who did not submit a bid
- a bid evaluation form showing all bid amounts and indicating the winning bidder

D. Development of the Procurement Document (see Section 5 attachments for Criteria for an IFB-RFQ Checklist)

1. Format

- a) Purchases of items or services, within a 12-month period, with a total value of \$25,000 or greater **MUST** be procured through the formal competitive bid process (i.e. advertised, sealed, written bids) unless specific authorization stating otherwise has been given by DED/DE.
- b) For all purchases \$25,000 or greater, agencies must utilize the IFB procurement instrument (or a similar electronic reproduction) for formal, sealed bid purchases. (See Attachment 5-8, Form A).

- c) When procuring furnace contractors for replacement, repairs, and clean and tune work on gas or oil forced-air heating systems, wall units and floor units, agencies may use the appropriate sample RFQ procurement instrument and RFQ form pages provided in the Section 6 attachments.
- d) The structure of a procurement document should follow this general pattern: (1) the Solicitation/Contract form; (2) general information; (3) bid evaluation criteria; (4) the bid form pages (with instructions to the bidder); (5) technical and/or material specifications; (6) special requirements; (7) contractual clauses; (8) contract administration information and (9) attachments.

2. Content of the IFB

- a) Firm, Fixed Price: Cost plus percentage of cost purchasing is not allowed. Program expenditures cannot be made on the basis of a seller's cost plus a percentage. All bids and contracts must be based on a firm, fixed price.
- b) Firm, Fixed Price: IFBs for weatherization services or materials should include estimates of the total quantity of each item to be purchased or estimates of the amount of services to be needed during the life of the contract for items for which the agency is able to reasonably determine estimated usage. Using a quantity of "A1" is inappropriate for items or services for which usage can reasonably be estimated. The one exception is Heating System General Repair Items.

The estimated quantities are required to be included in the bid package, although they are not required to be part of the mathematical calculations on the pricing pages. For example, the estimated quantities may be provided to bidders as an attachment to the bid. The estimated size of individual orders, when applicable, may also be included. Bidders must be informed that the quantities are estimates, and the agency is not obligated to purchase the exact amount.

- c) Quality Standards
 - (1) The agency must require vendors and contractors to comply with all material standards and specifications stated in the IFB, whether they are federally mandated standards or established by the agency. The IFB must state that this is a requirement and failure to comply may result in disqualification of the bid or termination of the contract.
 - (2) The agency must use the material standards specified in 2 CFR Part 200. The agency must identify the specification numbers for items being bid and include the phrase, "or subsequent ASTM, ANSI or F.S. approved standards which supersede this specification." (NOTE: This may be included in the IFB as a clause rather than repeated with each specification number.)
 - (3) The agency must abide by the list of approved weatherization materials in the Weatherization State Plan.

- (4) The agency should require all bidders to submit material certification documentation. If submission of this data is required, the IFB must inform contractors and vendors that failure to submit material certification documentation when requested can result in disqualification of the bid or termination of the contract.
 - (5) Quality standards for material specifications may be set where federal specifications are not set. The specific characteristics of the item must be clearly described.
 - (6) Standards and specifications may be set for reasonable programmatic needs. Standards shall not be set that limit competition for non-programmatic reasons.
 - (7) Standards and specifications must be clear and accurate. If a brand name is used for descriptive purposes, the purchaser must clearly describe the specific features sought that the specific brand possesses. It is not sufficient to state "Brand-X or equivalent."
 - (8) Substitution is defined as an item that materially conforms to the specifications listed, but is physically or technically different from the item bid. The IFB must state the conditions under which substitutions will be allowed. Substitution shall only be made with the advanced written consent of the agency. Any product provided that does not meet the listed specifications shall be replaced by the contractor at no expense to the agency. If the contractor is unable to make an acceptable adjustment or replacement, the agency shall interpret this as a breach of contract and may seek damages for default.
- d) Content Standards: Agencies to whom the EPA recycled content regulation applies must include appropriate content standards and other requirements, in accord with Part I.
- e) Performance Standards: Standards regarding performance by the supplier may be set relative to agency needs. Performance standards must be reasonable and based on program requirements. Examples of such standards are delivery time and place, billing procedures, etc.
- f) Bid Evaluation Criteria: The IFB must clearly state the criteria the agency will use to evaluate the responsiveness of the bid. These criteria must, at a minimum, cover the following points:
- (1) All original bids must be typed or handwritten in indelible ink.
 - (2) All original bids must be submitted to the agency in a sealed envelope with "Sealed Bid" clearly marked on the outside.
 - (3) The IFB will be awarded to the lowest-priced, responsive and responsible bidder.

- (4) To be eligible for evaluation, the bid must meet the stated standards for materials and comply with all conditions listed in the bid.
- (5) “Weighted Basis,” “Point Systems” or “Price Averaging” bid evaluations are not allowed.
- g) Bid Closing/Return: All procurement instruments must clearly state the time and date of the bid closing/deadline and the physical location where bids are to be received. (For proper handling of received bids, see Part VII of this section)
- h) Sealed Bid-Photocopy: The purpose of the sealed bid-photocopy is to provide verification of original bid prices in the event of a dispute. If the agency chooses to require all bidders to provide a sealed photocopy of the original bid, this photocopy must be:
 - (1) Provided by all bidders;
 - (2) Provided at the same time as the original bid;
 - (3) Sealed in an envelope with the words “Sealed Bid B Photocopy” clearly marked on the outside of the envelope.
- i) Bid Opening: All IFBs must clearly state the time, date and location of the bid opening. There must be a public opening of the bids, and public access to the bids must be provided. (Note: procurement documents, such as RFQs, are not opened publicly.)
- j) Extent of Federal Financial Support: Section 511 of Public Law 101-166, covering the publication of the extent of federal financial support, applies to weatherization procurement-related documents, regardless of the dollar amount of the procurement action, according to the DOE.

Each subgrantee is required to add the following information to weatherization procurement documents (IFBs and RFQs): (1) the total dollar amount of the weatherization program funds granted to the subgrantee during the current year and (2) the federal percentage of participation related to the total subgrant.

- k) Lien Waivers:
 - (1) With owner-occupied residential property of four units or less, according to Missouri Statute 429.013, full payment to the contractor for improvement, repair or remodeling of these structures “shall be a complete defense to all liens filed by any person performing work or labor or furnishing material, fixtures, engines, boilers or machinery” unless the owner has signed a “Consent of Owner” form for the contractor. The agency should caution clients not to sign any form or document presented to them by the contractor.

- (2) With other residential property, according to Missouri Statute 429.012, the labor and materials provided by a contractor may be subject to a mechanic's lien from unpaid suppliers of materials or services to the contractor, but only if the contractor has provided the agency and the property owner with a notice in 10-point bold type stating, in essence, that failure of the contractor to pay those persons supplying him/her with materials or services can result in the filing of a mechanic's lien. The notice has to be provided either when the contract is signed, when the first materials are delivered, or with the first invoice. Providing this notice "shall be a condition precedent to the creation, existence or validity of any mechanic's lien in favor of such original contractor."
- (3) Agencies may wish to require winning contractor(s)/vendor(s) to supply signed lien waivers from their suppliers prior to beginning work under the contract.
- (4) Agencies must include the following language in all bids/contracts: "Under no circumstance will any lien ever be placed on any client home."
- l) Organizational Structure: An agency may require each bidder to identify the business he or she represents as a sole proprietorship, partnership or corporation. If required, the owner of the sole proprietorship, all partners of the partnership or the chairperson of the board, chief executive officer, financial director and procurement director of the corporation must be clearly identified in the bid documents. [Reference: Conflict of Interest, Part s.(5) and (6)]
- m) Bid Bonds: An agency may require bidders to submit bid bonds. The bid bond is a monetary guarantee and assurance that the bidder will not withdraw his bid from consideration prior to contract award.

The agency shall determine an appropriate amount, equally assessed from all bidders, which will achieve this purpose. Bid bonds not forfeited to the agency during the bidding process shall be returned to the appropriate bidder. Agencies may require bid bonds in the form of any type of guaranteed surety such as a bond, Cashier's Check or Treasurer's Check.

- n) Performance Bonds: In determining a bidder's capability to perform, agencies must require the winning bidder(s) to submit a performance bond unless one of the following criteria is met: (See Attachment 5-9, Form B - Bidder Qualification Review) (1) the bidder has successfully completed a contract in the past with the agency or (2) the bidder has submitted name(s) of other purchasers for whom they have successfully completed a contract.

If the bidder does not meet either of the above criteria, agencies will require the winning bidder(s) to submit a performance bond. The performance bond is a monetary-type surety, held by the agency, which the vendor/contractor forfeits to the agency in the event of breach of contract or contract termination. Performance bonds may be in the form of any type of guaranteed surety such as a bond, Cashier's Check or Treasurer's Check.

It is recommended that the agency base any performance bond amount on the anticipated loss in production and damages that the agency would face should the supplier/contractor default. (Recommended guideline is ten percent (10%) of the contract amount).

- o) Renewal Clause: The agency has the option to include renewal language in a bid/contract. Weatherization supplies/services can be renewed yearly or up to a maximum of three (3) years. **This is the original contract year, plus two additional years.** If the agency chooses to include a renewal in the bid, the agency must select either a price or percentage-type of renewal and provide the appropriate space(s) in the bid document. It is recommend the bid/contract contain language that: (1) any renewal is based on successful completion of previous term of the contract as determined by the agency; (2) renewal is mutually agreeable by both parties; (3) renewal must be in writing, signed and dated by both parties and (4) renewal price/percentage will be included in the bid evaluations when determining the lowest price of the initial bids.
- p) Breach of Contract/Termination (2 CFR 200 Appendix II,A): All contracts must have provisions that: (1) allow for remedies in case of breach of contract and (2) allow for termination of contract and detail conditions for the settlement of all claims.
- q) Equal Employment Opportunity (2 CFR 200 Appendix II,C): In all contracts/subcontracts, contractors must assure compliance with Executive Order 11246, as amended, "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented by Dept. of Labor regulations (41 CFR Part 60).
- r) Copeland Anti-Kickback: All contractors must be required to provide assurance of compliance with the Copeland "Anti-Kickback" Act (18 USC 874) and (29 CFR Part 3).
- s) Required Contract Clauses: **The following language must be included in the IFB:**
 - (1) No interest shall be paid from DED funds for any reason.
 - (2) The activities of the contractor's staff and associates shall be fully coordinated with the activities of the agency. As the work of the contractor's staff and associates progresses, advice on matters of immediate concern to the agency and related to the specific scope of work covered by the contract shall be made available to the agency during the period of the contract.
 - (3) The contractor shall not assign any interest in the contract and shall not transfer any interest, whatsoever, in the same (whether by assignment or novation/substitution), without the written consent of the agency.
 - (4) The contract shall be construed according to the laws of the State of Missouri.

- (5) No official or employee of the agency, or official or employee of the contractor or its governing body, or any public official of the State of Missouri who exercises any functions or responsibilities in the review or approval of the undertaking or in the fulfillment of the obligations of the terms and conditions of contract shall, prior to the completion of the term of contract, voluntarily acquire any personal interest, direct or indirect, in the contract, proposed contract or contract subject.
- (6) The contractor covenants that he has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the specified services. The contractor further covenants that in the performance of this contract, no person having any such known interest shall be employed.
- (7) The contractor acknowledges that funds expended for the purposes of the contract are appropriated by State and/or Federal sources and, therefore, the contract shall automatically terminate without penalty or termination costs if such funds are not appropriated. In the event that funds are not appropriated for the contract, the contractor shall not prohibit or otherwise limit the agency's right to pursue and contract for alternate solutions and remedies as deemed necessary by the State and/or Federal agency for the conduct of its affairs. The requirements stated in this paragraph shall apply to any amendment or the execution of any option to extend the life of the contract.
- (8) The contractor agrees that the agency and/or clients of the agency shall not be liable for the debts of the contractor or any other firm or organization affiliated with the contractor in the fulfillment of the terms of this contract.
- (9) The bid/contract may be invalidated by the agency and/or the State of Missouri, DED/DE.
- (10) The State of Missouri, DED/DE Weatherization Program is not a party to this bid or contract and shall be held harmless in any dispute arising from this bid or contract.
- (11) None of the work or services specified in this contract shall be subcontracted by the contractor without the prior written consent of the agency and DED/DE. Approval to subcontract shall in no way release the contractor of his responsibility to fulfill all terms and obligations under this contract.
- (12) The contractor agrees that all work shall be performed in strict compliance with all applicable laws, ordinances, OSHA guidelines, EPA's Lead; Renovation, Repair, and Painting Final Rule (LRRPP), rules, and regulations, of federal, state, county or municipal governments or agencies, now in force or that may be enacted hereafter. The final inspection report of the agency shall not be deemed to be a warranty or representation that all such laws, ordinances, rules and regulations have been complied with by the contractor.

- (13) Under no circumstance will any lien ever be placed on any client home.
- (14) The contractor must be registered and maintain good standing with the Missouri Secretary of State Office and other regulatory agencies, as may be required by law or regulations.
- (15) Per DOE guidelines, the following clause must be in all Weatherization and HVAC contractor contracts: “All work performed with funding administered by the Department of Economic Development/Division of Energy (DED/DE) Weatherization Assistance Program must meet the objectives and specifications outlined in the Standard Work Specifications for Home Energy Upgrades and the Missouri Weatherization Program Technical Manual. These specifications can be found at: <https://sws.nrel.gov/> and at: [https://energy.mo.gov/energy/consumers/assistance-programs/low-income-weatherization-assistance-program-\(liwap\)](https://energy.mo.gov/energy/consumers/assistance-programs/low-income-weatherization-assistance-program-(liwap)) All work will be inspected and validated by a certified Quality Control Inspector before being submitted for reimbursement
- t) Other Applicable Federal Regulations: In addition to the other items mentioned in this document, agencies are required to follow all other parts of 2 CFR Part 200 and 10 CFR Part 600, as amended, which are applicable to nonprofits or local governments. This includes, but is not limited to, Access to Records, Records Retention, Patents and Copyrights.

3. Preparation of the Heating Systems Clean, Tune, and Repairs RFQ for Use

When bidding Heating System services, agencies have the following bidding options (if the expected cost is less than \$25,000 over a 12-month period, for an agency’s entire service area):

- a) Informal telephone or written bids for Clean and Tunes and General Repair items as needed. (This method is not recommended for agencies that need a large number of Clean and Tunes and general repairs performed.)
- b) Formal written bid of Clean and Tunes only. (In this case, General Repairs would be telephone bid on an as needed basis.)
- c) Formal written bid of Clean and Tunes and General Repair items.

If an agency expects to spend more than \$25,000 in Heating System services for its entire service area over a 12-month period, the agency must either bid Heating System Services using the formal competitive bid process or the agency may establish a pool of contractors from which they solicit bids for each home. (See V. C. in this section for more information)

- d) The agency may use the sample Clean, Tune and RFQ procurement instrument provided in the Section 5 attachments.

- e) Agency staff are responsible for ensuring that quotation prices are reasonable. The basis for determining reasonableness include, but are not limited to, comparison with prior year costs and comparison with other weatherization agencies.
- f) Complete the blank spaces in the RFQ to provide necessary information to vendors (time limits, service area, re-works and client complaints).
- g) Include the county name with the page number on the three pricing pages (e.g., 1-Saline, 2-Saline, 3-Saline). Do this only on the pricing pages. This will enable the agency to provide separate pricing pages for each county rather than separate RFQs, thus reducing administrative costs. For example, if a contractor indicates interest in four counties, fasten the four sets of pricing pages matching those counties to the RFQ, and give the document to the contractor, rather than giving him or her four separate RFQs.
- h) Provide an estimated quantity of Clean and Tunes on the RFQ cover page. It is recommended that the estimated quantity of clean and tunes be based on the number of clean and tunes done during the previous program year and adjusted based on current-year estimated production.
- i) A quantity of "A1" may be used for General Repair items due to difficulty in estimating usage. If an agency chooses to use an estimated quantity greater than one, it is recommended that the estimated quantities for general repair line items be based on the repairs called for during the previous program year and adjusted based on current year estimated production.
- j) If the agency uses telephone solicitation, an RFQ for each bidder must be completed at the time of the telephone conversation, identifying the contractor and the contractor's prices. This RFQ must be signed by the contractor if he or she is the winning respondent.

4. Preparation of the Furnace/Air Conditioner Replacement RFQ for Use

When bidding furnace or air conditioner replacement, agencies have the following bidding options (if the expected cost is less than \$25,000 over a 12-month period, for an agency's entire service area):

- a) Informal telephone or written bids for furnace or air conditioner replacement as needed. (This method is not recommended for agencies that need a large number of Clean and Tunes and general repairs performed.)
- b) Formal written bids for furnace and air conditioner replacement.

If an agency expects to spend more than \$25,000 in furnace or air conditioner replacements for its entire service area over a 12-month period, the agency must either bid furnace and air conditioner replacements using the formal competitive bid process or the agency may establish a pool of contractors from which they solicit bids for each home. (See V,C in this section for more information).

- c) The agency may use the sample Furnace RFQ procurement instrument provided in the Section 5 attachments.
- d) Each furnace replacement RFQ is for one furnace.
- e) Identify the furnace system to be replaced, and identify what type of heating system and components are needed. Heating System Replacement is limited to those systems meeting the criteria specified in the current Missouri Weatherization Program State Plan.
- f) Clearly and completely identify the job site.
- g) Complete the blank spaces in the RFQ to provide necessary information to vendors (time limits, description of furnace, client address, etc.).
- h) If the agency uses telephone solicitation, an RFQ for each bidder must be completed at the time of the telephone conversation, identifying the contractor and the contractor's prices. This RFQ must be signed by the contractor if he or she is the winning respondent.

5. Quality Standards for Heating System Clean and Tune, Repairs and Replacements

Service and materials must meet or exceed the specifications listed in 10 CFR Part 440 Revised Appendix A or subsequently approved standards that supersede those specifications.

6. Financial Audit Bid Requirements

See 2 CFR Part 200.509 – Auditor Selection.

VI. Solicitation

A. Type of Procurement

Under \$3,000 - No Bid Required

All purchases shall be made by competitive procurement except those that are a single or repetitive purchase of like items within a 12-month period, with a total value of less than \$3,000. **Note: All vehicle purchases, even if the purchase price is below \$3,000, require both DOE and DED/DE approval before the vehicle may be purchased.**

\$3,000-\$24,999 - Informal/Telephone/Written Bids Required

Single or repetitive purchases of like items or services, within a 12-month period, with the total value of \$3,000 to \$24,999 must be procured through the competitive process by informal/telephone/written bids. The agency must obtain a minimum of three (3) competitive bids. (See Sole Source; Sole Response; and “No bid” Response, Part VII, B of this section) However, informal/telephone/written bids are to be completed each time the item(s) is (are) needed. Purchases within this dollar-value window may also be procured by sealed, written bids. However, if the cumulative purchases in a 12-month period exceed \$24,999, then a formal, bid process must be completed.

The agency may wish to use the, “Bid Tabulation” (See Attachment 5-12, Form G)

The agency may wish to require telephone bidders to submit written bids to the agency before the end of five working days in order to be eligible for a contract award.

Before any work is awarded, a contract between the agency and the contractor must be signed by both parties, which includes all of the clauses and disclaimers required by the Program Operational Manual. (See Part V, D, 2, s), (1) through (14) of this section)

All informal bid documentation (not related to a specific home, such as a RFQ for a furnace, because that bid documentation should be included with the specific client file it pertains to) should be maintained in the agency’s general/master bid files.

\$25,000 or more - Formal, Sealed Bids Required

Unless bids are done on a home by home basis, (see part V,C. of this section) purchases of items or services, within a 12-month period, with a total value of \$25,000 or greater must be procured through the formal competitive bid process. These purchases must be completed by advertised, sealed, written bids. The agency must obtain a minimum of three (3) competitive bids. (See, Part VI, B, Ensuring Competition and Part VII, B, Sole Source, Sole Response and “No Bid” Response of this section)

Before any work is awarded, a contract between the agency and the contractor must be signed by both parties, which includes all of the clauses and disclaimers required by the Program Operational Manual. (See Part V, D, 2, s), (1) through (14) of this section)

B. Ensuring Competition

The agency must abide by federal requirements for full and open competition. This includes the development and updating of bidders lists and public announcements when appropriate.

To obtain a list of potential bidders, agencies may wish to check the Thomas Register, which is a thorough listing of American Manufacturers. The Internet address is <http://www.thomasnet.com>.

The agency shall advertise for proposals in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders and may advertise in at least two weekly minority newspapers and may provide such information through an electronic medium available to the general public at least fourteen (14) days before proposals for such purchases are to be opened.

C. Pre-bid and Pre-quotation Conferences

Agencies are encouraged to hold pre-bid and pre-quotation conferences, open to all interested parties, to clarify bid procedures and answer any questions about the bid process.

It is suggested that the following items be discussed at the pre-bid conference, and at pre-quotation conferences, if appropriate: (1) how to complete and submit the procurement document; (2) criteria to be used to evaluate bid price; (3) how corrections will be handled; (4) how to obtain information regarding material specifications; (5) nondiscrimination provisions; (6) criteria for past performance or submittal of performance bonds; (7) examination of sample products; (8) right of agency to accept and reject bids; (9) contract alterations; (10) contract termination; (11) remedies in case of default/liquidated damages; (12) warranties and guarantees; (13) indemnities; (14) shipping instructions; (15) covenant against contingent fees; (16) lien waivers; (17) discounts; (18) bid bonds; (19) protests; (20) withdrawals and (21) liability (22) contractor debarment certification (23) contractor registration with the Missouri Secretary of State Office.

D. Handling Bidders' Questions

The agency must ensure that, during the solicitation phase, information is provided equitably to all bidders.

E. Contractor Debarment Certification

The offeror certifies by signing the agreement that they are not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from participation, or otherwise excluded from or ineligible for participation under federal assistance programs. This must be verified by the agency prior to award of the contract. **NOTE:** Copies of the internet debarment search pages, even if they indicate, "No Results Found" must be kept in the agency's master/general bid files.

The following is a link to the State of Missouri's contractor suspension/debarment list:

<http://oa.mo.gov/facilities/project-management/debarred-contractors>

The following is a link is to the Federal Excluded Parties List System:

<https://www.sam.gov/portal/SAM/#1>

Click the "Search Records" button, then click the "Advanced Search – Exclusion" button.

F. Physical Handling of the Returned IFB/RFQ

The agency must ensure that a check-in/log procedure is used when sealed bids are received. This should include identifying the bidder, bid subject, and time and date the agency received the sealed bid on the outside of the envelope. The agency must ensure that the sealed bids (and bid bond, if any) are kept in a secure location (under lock and key) until time for the Bid Opening.

G. Handling of Sealed Bid – Photocopy

If the agency has required the bidder to submit a photocopy of the IFB, the photocopy must remain inside the sealed envelope in the agency's files for future review or legal settlement. Bidders who do not provide an appropriate photocopy when required to do so are nonresponsive and ineligible for bid award.

H. Withdrawal of an IFB/RFQ Prior to Opening

Bidders should be allowed to withdraw their bid prior to the Bid Opening, if this occurs before the bid deadline has passed. The bidder may resubmit a bid(s) as long as the resubmitted bid(s) is (are) received prior to the bid deadline. Once a bid has been withdrawn and the bid deadline has passed, resubmission shall not be allowed.

VII. Bid Opening

A. Public Opening

Formal, sealed bids must be opened and read aloud in a public setting. A minimum of three people must be present at a sealed-bid opening. The agency must also provide for public inspection of all bids during and after opening (provided this does not hamper the bid qualification and evaluation process). Copies of the bids, corrections and evaluations/tabulations should be made available immediately to any interested party.

B. Sole Source; Sole Response; and “No Bid” Response

Sole Source purchase exists when: 1) supplies are proprietary and only available from the manufacturer or a single distributor; or 2) based on past procurement experience, it is determined that only one distributor services the region in which the supplies are needed; or 3) supplies are available at a discount from a single distributor for a limited period of time.

An agency must request prior approval, with written justification, from DED/DE prior to making a purchase (commodity or service) from a sole source vendor.

Sole Response exists when: (1) only one bidder has responded to a bid solicitation or (2) only one bidder remains eligible for bid award after all bids have been reviewed against whether they meet the bid requirements.

- a) The agency must document its efforts to obtain competition and maintain

documentation in its records for monitoring purposes.

- b) If an agency encounters a sole-response situation, and the bid price is \$25,000 or greater, the agency must seek DED/DE approval to accept the bid. A cost analysis must be submitted to DED/DE at the time the agency seeks sole response bid approval. The cost analysis must be submitted on the “Sole Response Approval Request Form” (See *Forms E and F*). Choose the appropriate form because there is one for materials and one for services. Submit the completed form to DED/DE.
- c) A “No Bid” response exists when a bidder returns the bid marked as “no bid.” A “no bid” response from a bidder/vendor may be counted toward the requirement for three competitive bids provided that all “no bid” vendors could have reasonably been expected to provide the commodity/service.

C. Corrections to the IFB

During the bid qualification process, the bidder and/or the agency may, in a public setting, make corrections to the bid for only those items that will in no way affect either the bid prices that have been quoted or the validity of the bid. These corrections are strictly limited to clerical-type information, e.g. wrong or missing dates, failure to submit an address or telephone number, etc. Corrections shall not include any specific or technical requirements listed in the invitation for bid, i.e. submission of the bid by a specified deadline, failure to submit the bid in a marked and sealed envelope, failure to fulfill all bid requirements, etc.

Correctable errors will be allowed in order to prevent an otherwise valid bid from being disallowed due to an unintentional oversight or error on the part of the bidder that does not involve data or information used for comparative or evaluative purposes. The actual correction of an error shall be performed only by authorized agency personnel at the time of bid opening. All correctable errors must be fully documented by the agency and witnessed, either in the presence of the bidder and two other disinterested persons not affiliated with either the agency or the firm whose bid is corrected, or by a Notary Public.

D. Preliminary Award

A preliminary award may be announced at the bid opening, with the understanding that the bids will need to be closely evaluated before final award will be made.

E. Withdrawal of Bid After Bid Opening

All bidders shall be allowed to withdraw their bid at any time until the award of the RFP has been completed. Once a bid has been withdrawn from consideration after bid opening, corrections or re-submissions shall not be allowed.

A bidder who is chosen as the winner, both parties having signed the bid, is obligated to fulfill the terms of that contract with the agency. Non-fulfillment of any of the terms of the contract shall be deemed as a breach of contract. In the event of such a breach of contract, the agency shall seek remedies as stated in the contract and to the full extent that the law provides, including

forfeiture of the entire amount of the bid bond to the agency. The entire amount of the bond shall be retained by the agency and applied to the weatherization program. DED/DE must be notified immediately when bonds are retained by an agency. The agency also may refuse to accept future bids from that vendor for a period not to exceed two (2) years.

VIII. Bid Evaluation and Award

A. Evaluation Criteria

Bid evaluation and award must be based on evaluation methodology clearly stated in the procurement document. DED/DE may require justification for evaluation methodology.

All bids must be evaluated on the basis of the documents submitted. Prices must be firmly and clearly stated in handwritten or typewritten indelible ink.

IFB award shall be made only to a responsible bidder whose bid is both responsive to the agency's solicitation and extends to the agency the most advantageous price.

For both material items and contracted services the, "lowest and best" bid must be accepted. In determining the lowest and best award, factors may include, but are not limited to, value, performance, and quality of product. These evaluation criteria factors must be clearly identified in the IFB. If the lowest and best bid is not accepted then documentation must be maintained in the files giving the reason why and the bid must be approved by DED/DE.

For contracted services the agency may choose to award the contracted services to primary, secondary, tertiary, etc., contractors. If the agency makes a decision to award the contracts in that manner, the bid specifications must include the information on how the services will be awarded. In addition, the primary, secondary, and tertiary contracts must be awarded at the same time. The lowest bidder will be the primary contractor, the second lowest bidder will be the secondary contractor, the third lowest bidder will be the tertiary contractor, etc.

NOTE: The agency must always go to the primary contractor each time service is needed.

The agency will be required to utilize the primary, secondary, tertiary, etc. contractor in that order unless one of the following conditions applies:

- a. The primary contractor cannot provide the services in the time frame requested by the agency in its IFB. In such event, the agency may award the work to the next lowest bidder (secondary contract). If the next lowest bidder (secondary contract) cannot provide the services in the time frame requested by the agency, the agency may award the work to the third lowest bidder (tertiary contract).
- b. The agency has documented, in writing, that they have been receiving unsatisfactory services applicable to the primary (or secondary, tertiary, etc.) contractor's work performance. The agency must identify the problem(s) and give the contractor a period of time in which they

will allow the contractor the ability to correct the problem(s). After an attempt has been made to do this and the problem(s) have not been corrected, the contract may be terminated.

- c. If in the opinion of the agency there exists a potential conflict of interest with the primary contractor (or secondary, tertiary, etc.) on a given project, the agency may award the contract to the next lowest bidder (secondary contractor).

Circumstances may arise in which the agency discovers, after award of the primary contract, that the primary contractor cannot provide services in the requested time frame, performs in an unsatisfactory manner or has a conflict of interest. In these situations, the agency may cancel the contract with the primary contractor and may award a contract to the second-lowest bidder (secondary contract). If the agency discovers these kinds of issues with the secondary contractor, the agency shall cancel the contract with the secondary contractor and may award a tertiary contract.

Point systems for bid evaluations/awards can be utilized if it is clearly explained in the IFB or RFQ how the bids will be evaluated. Rebates and/or discounts shall not be considered or allowed in evaluation of the IFB or RFQ.

The agency should use a “Bidder Qualification Review” sheet, similar to the one provided in Attachment 5-9, *Form B*, to evaluate the responsibility and responsiveness of the bid.

The agency may use the “Bid Tabulation” form provided in Attachment 5-12, *Form G* or an equivalent form to tabulate the bids received.

Agencies are encouraged to solicit bids from small, minority and women-owned business enterprises and to include small, minority and women-owned business enterprises on bidders lists. No special preference, however, may be given to a small, minority and women-owned business enterprises in the bid qualification and evaluation process solely because it is a small, minority and women-owned business enterprise.

Subcontracting: If a potential contractor plans to subcontract any weatherization work, the contractor must receive prior, written approval from the agency and DED/DE. (See DED/DE Terms and Conditions, appendix D)

If the bid documents were designed with a renewal option, the bidders’ price or percentage of change of the renewal option must be included in the price evaluations when determining the lowest bid price.

B. Responsiveness

IFB: The responsiveness of the bidder refers to whether the bidder filled out the IFB according to the agency’s instructions and submitted all documentation (if any) required by the agency for use in bid evaluation. An IFB determined non-responsive is disqualified from further review.

RFQ: A competitive procurement document, such as an RFQ, may be made

responsive by asking for clarification from the offeror. Clarification refers to communication with an offeror “for the sole purpose of eliminating minor irregularities, informalities or apparent clerical mistakes in a proposal.”

C. Responsibleness

The responsibleness of the lowest bidder must be evaluated prior to award. A bidder or respondent determined nonresponsive by the agency is ineligible for contract award. Evaluation criteria include: (1) financial resources, or ability to obtain them as required during the performance of the contract; (2) ability to comply with delivery or performance schedules; (3) past performance; (4) a satisfactory record of integrity and business ethics; (5) organization, experience, controls and skills; (6) facilities and equipment; and (7) eligibility for award under applicable laws and regulations (for example, equal employment opportunity compliance).

The agency cannot limit acceptable past performance solely to previous work with the agency. (If the supplier has never had a contract with the agency, the supplier must be allowed to show prior performance with other buyers with similar needs).

D. Protests

Five working days from the date of notification to bidders of the proposed award shall be allowed for protest by the participating bidders. Final award shall only be made after the five-working-day protest period ends.

The agency must have written procedures for dealing with protests.

IX. Contract Management

A. When an IFB Becomes a Contract:

An IFB becomes a contract when it has been signed by the bidder and countersigned by appropriate agency personnel. After that point, it is appropriate to refer to the document as a contract rather than an IFB or bid. Only agency forms should be used for bids/contracts.

B. Amendments to the Contract:

Amendments to the Contract, should any become necessary during the course of the Contract, may be made only if allowed by a clause in the contract. The clause must state that the amendments will be mutually agreed upon in writing between the contractor and the agency and will be signed and dated by both parties. (The agency may use the sample amendment in Attachment 5-12, *Form I*.) It is the agency’s responsibility to ensure that the price of an amended item is found reasonable.

C. Breach of Contract

Breach of Contract occurs when the contractor continues to violate any of the terms or

conditions of the contract after being notified by the agency of the lack of compliance and possible consequences.

The agency must have written procedures for dealing with breach of contract, and contract termination and cancellation.

D. Performance Bond

The agency shall capture the performance bond when the agency determines that the contractor is in breach of contract, through noncompliance with the terms and conditions of the contract, including, but not limited to, performance standards, technical requirements and contractual clauses.

The entire amount of the performance bond shall be captured and shall be used for weatherization program expenditures.

In the event an agency plans to capture a performance bond, the agency must notify DED/DE in writing immediately.

E. Photocopy of Sealed Bid:

If the agency has required a “sealed-bid-photocopy” from the bidder, and that photocopy must be opened, the sealed photocopy shall only be opened in the presence of appropriate parties, which may include the Executive Director of the agency, agency attorney and Notary Public. If any discrepancy exists between the original bid and the photocopy, the bid or contract shall be immediately disqualified or discontinued (canceled or terminated) by the agency.

X. Guideline for Implementation of the Recycled Products in Insulation Requirement

A. Who and What are Affected by the Regulation

Agencies (both crew and contract), which procured \$10,000 or more of building insulation products during the previous fiscal year, are required to develop an affirmative procurement program targeting the purchase of insulation containing recycled products to the maximum extent practical. Other agencies that, during the coming year, make a single purchase of these products exceeding \$10,000 will also have to abide by this regulation at the time the purchase is made and for the remainder of the program year.

The \$10,000 threshold refers to the total amount of building insulation products purchased by the agency, not to individual types of insulation.

“Building insulation product” is defined as a material designed to reduce heat loss and that is installed between heated and unheated areas of the home. This includes, but is not limited to blanket, board, spray-in-place and loose-fill products used as ceiling, floor, foundation and wall insulation. The regulation does not apply to air handling, acoustic, pipe and cold-storage insulation.

B. Procurement Procedures

In order to be in compliance with state plan requirements, agencies to whom this regulation applies must revise applicable portions of their procurement procedures. This includes, but may not be limited to, the material/technical specifications, handling of ties, publicity, verification of compliance and evaluation of effectiveness.

C. The Affirmative Procurement Program

The Affirmative Procurement Program consists of the four components outlined below:

1. Preference Program

Determine the type of insulation product that will meet the agency's needs (e.g. fiberglass, cellulose, rock wool, etc.). Specify that type of insulation in the IFB.

The selection of the type of building insulation product may be based on performance characteristics, structural considerations, building codes, availability of competition, etc. In those cases where more than one type of product meets the agency's needs, the product having the highest minimum content standard should be specified.

Include in the technical specifications portion of your IFB the minimum content standard listed below for that type of insulation.

<u>Type of Insulation</u>	<u>% Recycled</u>	(based on wt. of core materials)
cellulose	75%	
rockwool	75%	
perlite composite board	23%	
PIR/PR rigid foam	9%	
foam-in-place	5%	
phenolic rigid foam	5%	

Inform (via IFB) the bidders that all bidders will be required to provide estimates of the percentage of recycled materials in the products they are bidding, and the winning bidder will be required to provide certification of the recycled content prior to contract award.

There is currently no minimum content standard for fiberglass insulation. Procurement of fiberglass insulation is allowed; however, the agency must base any decision to procure a building insulation product not containing recycled materials on one or more of the following: (1) availability within a reasonable time period, (2) availability at a reasonable price, (3) compliance with federal competition regulation and (4) technical performance of the product.

These are the only acceptable reasons for not procuring building insulation products containing recycled materials to the maximum extent practical.

As always, award the contract to the lowest responsive, responsible bidder. If there is a tie, the contract will be awarded to the tying bidder whose product contains the highest percentage of recycled materials.

2. Promotion Program

The regulation requires agencies to publicize the fact that insulation products containing recycled materials are being targeted. Appropriate forums for implementing this requirement include, but may not be limited to, pre-bid conferences, advertisements, brochures, invitations for bid, pertinent correspondence, news releases, etc.

3. Estimation/Certification/Verification

The regulation requires agencies to develop estimation, certification and verification procedures. All bidders will be required to provide the agency with estimates of the percentage of recycled materials in the products they are bidding, and the winning bidder will be required to provide certification of the recycled content prior to the contract award.

The agency will verify the percentage of recycled materials contained in the insulation provided by the contractor. This verification can be done by contacting the manufacturer and providing him or her with batch numbers. There must be documentation in the files that this contact has been made. If the insulation provided by the contractor does not meet the requirements stated in the IFB, the contractor is in violation of his or her contract and is subject to the agency's procedures on contract compliance.

4. Annual Review and Monitoring

The regulation requires agencies to conduct an annual review and monitoring of the effectiveness of its affirmative procurement program. The review must be documented in the agency's files.

The annual review and monitoring shall cover the following points:

- a) the quantity and dollar amount of building insulation with recovered content purchased and the quantity and dollar amount of all building insulation purchased;
- b) an assessment of the effectiveness of the promotion program;
- c) an assessment of barriers to the purchase of insulation with recovered content (e.g. unavailability, resistance to use, etc.);
- d) any other information the agency feels is pertinent to assessment of the affirmative procurement program, or any information requested by DED/DE.

To assist the agency in meeting these requirements, Attachment 5-12, *Form J*, is a sample form that covers the above points.